

CHAPTERS 21 to 25

Reserved

TITLE III

SALES TAX ON SERVICES

CHAPTER 26

SALES AND USE TAX ON SERVICES

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[Prior to 12/17/86, Revenue Department[730]]

701—26.1(422) Definition. The phrase “persons engaged in the business of” as used herein shall mean persons who offer the named service to the public or to others for a consideration whether such person offers the service continuously, part-time, seasonally or for short periods. The Iowa sales tax law imposes for periods prior to July 1, 1992, a tax of 4 percent and for periods on or after July 1, 1992, a tax at the rate of 5 percent upon the gross receipts from the rendering, furnishing or performing at retail of certain enumerated services, hereinafter described in more detail in this chapter.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47 and 423.2.

701—26.2(422) Enumerated services exempt. Tax shall not apply on any of the following services.

26.2(1) Services on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, or the services of a general building contractor, architect or engineer. *Iowa Movers and Warehousemen’s Association v. Briggs*, Equity No. 75910, Polk County District Court, May 8, 1974.

26.2(2) A taxable service which is utilized in the processing of tangible personal property for use in taxable retail sales or services.

26.2(3) A service which is performed on tangible personal property delivered into interstate commerce or when such service is performed in interstate commerce in such a manner that imposition of tax would violate the commerce clause of the United States Constitution.

26.2(4) Services rendered, furnished or performed for an “employer” as defined in Iowa Code subsection 422.4(15).

26.2(5) Those exemptions in 701—Chapter 17 applicable to both sale of services and sale of tangible personal property, excluding those exemptions pertaining only to the sale of tangible personal property.

26.2(6) A service which is purchased for resale. A service is purchased for resale when it is subcontracted by the person who is contracted to perform the service. For example:

a. X is a printer and enters into a contract with Y to print 500 bulletins. X subcontracts the job to Z. Z prints the 500 bulletins for X. There is no tax on the contracts between X and Z since X is purchasing the printing service from Z for resale to Y.

b. B owns a used car lot. E purchases an automobile from B. As a condition of such sale, B agrees to make repairs to the automobile. However, B subcontracts such repair work to C. E has agreed to pay B for the repair services and for the sale price of the automobile. Under these circumstances, the repair services furnished by C to B constitute a sale of such services to B for resale to E who is the consumer of these services.

c. B owns an auto repair shop and C brings an automobile in to have the air conditioner fixed. B is unable to fix the unit so the car is sent to G who is an air conditioning specialist. The sale of G’s service to B is a sale for resale by B to C.

26.2(7) Services purchased which are not for resale. For periods beginning July 1, 1978, the tax on services is collectible at the time the service is complete even if not purchased by the ultimate beneficiary. For example:

a. B, a used car dealer, owns a used car lot and contracts an automobile repair job to C. B cannot purchase the repair service for resale merely because at some later date the automobile may be sold. Tax is due when the service is completed for the used car dealer. See *Iowa Auto Dealers v. Iowa Department of Revenue*, 301 N.W.2d 760 (Iowa 1981). This particular example does not apply to denote tax due after June 30, 1981. See subrule 26.2(8).

b. A operates a test laboratory business. A agrees to provide testing services to B. In the course of conducting the tests, A rents equipment from C. In computing the fee which B has agreed to pay A for testing services, A will include A's costs, including the rental A paid to C in rendering the testing services. Under these circumstances, A furnished B with testing services, and not with the equipment rental services which C furnished to A. A is the consumer of the equipment rental services which are not resold to B and B is the consumer of the testing services. See rule 701—15.3(422,423) regarding resale certificates.

26.2(8) Services are exempt from tax when used in the reconditioning or repairing of tangible personal property of the type which is normally sold in the regular course of the retailer's business and which is held for sale by the retailer. For example:

a. A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B-tax free because A is regularly engaged in selling refrigerators and will offer the refrigerator for sale when it is repaired.

b. B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax-free because B is regularly engaged in selling used cars and will sell the used car after it is repaired.

c. C operates a retail farm implement dealership. C accepts a motorboat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motorboats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

d. XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television set that XYZ is going to sell. XYZ can purchase television repair service tax-free from W because XYZ is regularly engaged in selling television sets subject to sales tax. However, in this instance XYZ sells the used television and delivers it into interstate commerce with the result that the Iowa sales tax is not collectible. Regardless of this fact, the exemption is applicable, and no Iowa tax is due for the television repair services performed.

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(13) and 422.43.

701—26.3(422) Alteration and garment repair. Persons engaged in the business of altering or repairing any type of garment or clothing are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Included are the services rendered, furnished or performed by tailors, dressmakers, furriers and others engaged in similar occupations. When the vendor of garments or clothing agrees to alter same without charge when an individual purchases such garments or clothing, no tax on services, in addition to the sales tax paid on the purchase price of the article, shall be charged. However, if the vendor makes an additional charge for alteration, that additional charge shall be subject to the tax on the gross receipts from the services.

701—26.4(422) Armored car. Persons engaged in the business of either providing armored car service to others or converting a vehicle into an armored car are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Armored car” shall mean a wheeled vehicle affording defensive protection by use of a metal covering or other elements of ordinance. The exemption for transportation services shall not apply.

701—26.5(422) Vehicle repair. Persons engaged in the business of repairing vehicles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Repair” shall include any type of restoration, renovation or replacement of any motor, engine, working parts, accessories, body or interior of the vehicles, but shall not include installation of new parts or accessories which are not replacements, added to the vehicles. “Vehicle” shall mean a vehicle commonly used on a highway propelled by any power other than muscular power. The exemption for transportation services shall not apply.

Also see 701—subrule 18.31(2) relating to auto body shops.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.6(422) Battery, tire and allied. Persons engaged in the business of installing, repairing, maintaining, restoring or recharging batteries, and services joined and connected therewith, and persons engaged in the business of installing, repairing, maintaining tires, and services joined or connected therewith, for any type of vehicle or conveyance are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. The exemption for transportation services shall not apply.

701—26.7(422) Investment counseling. Persons engaged in the business of counseling others relative to investment in or disposition of property or rights, whether real, personal, tangible or intangible, where a charge is made for counseling, are rendering, furnishing or performing services, the gross receipts from which are subject to tax. Investment counseling does not include the mere management of a business or property. Where a retailer is rendering investment counseling services and also managerial services and the managerial services are not merely incidental to the investment counseling service, nor are the investment counseling services merely incidental to the managerial services and both are substantial and contracted for but neither is specifically identifiable, the tax shall apply to 50 percent of the total gross receipts therefrom.

Prior to July 1, 1987, the gross receipts from investment services rendered, furnished, or performed by trust departments were exempt from tax. On and after July 1, 1987, the gross receipts from investment counseling rendered, furnished, or performed by a trust department are subject to tax.

This rule is intended to implement Iowa Code section 422.43.

701—26.8(422) Bank and financial institution service charges.

26.8(1) Taxation of service charges before and after July 1, 1987. Prior to July 1, 1987, only the service charges of a “bank” were subject to tax. On and after July 1, 1987, the service charges of all “financial institutions” are subject to tax.

a. Bank defined. A “bank” is an institution empowered to do all banking business, for example, an institution having the power and right to issue negotiable notes, discount notes, and receive deposits. Bank business consists of receiving deposits payable on demand and buying and selling bills of exchange. Savings and loan associations and other financial institutions not commonly considered to be banks are not considered a bank for the purposes of this rule.

b. Financial institution defined. “Financial institutions” include and are limited to all national banks; federally chartered savings and loan associations, federally chartered savings banks, and federally chartered credit unions; banks organized under Iowa Code chapter 524; savings and loan associations and savings banks organized under Iowa Code chapter 534; and credit unions organized under Iowa Code chapter 533.

26.8(2) Service charges characterized. The gross receipts from “service charges” which relate to a depositor’s checking account are the only gross receipts subject to tax under this rule, whether the service charges are those of a bank or of a financial institution. For the purposes of this rule, the term “checking account” is characterized with reference to its common meaning rather than any technical definition. An account in a bank or financial institution is a “checking account” if withdrawals may be made from the account by a written instrument, including but not limited to, instruments such as a check, a draft, or negotiable order of withdrawal (NOW). A checking account may or may not pay interest. NOW and Super NOW accounts are specifically included within the meaning of “checking account.” Excluded from the meaning of that term are certificates of deposit. The above definition is meant to be illustrative only and not all-inclusive. In the future, other types of checking accounts may be created which are not described herein.

Since only the gross receipts of bank or financial institution service charges which relate to a “checking account” are subject to tax, the same service performed by a financial institution could be taxable or not taxable depending upon whether it was performed or not performed in relation to a checking account.

EXAMPLE: A bank’s customer loses the bank’s monthly statement. The bank sends the customer another monthly statement but assesses the customer’s account a “duplicate statement fee.” If the duplicate statement fee is assessed on a “Super NOW” account, the gross receipts of the duplicate statement fee are subject to tax. If the duplicate statement fee is assessed against a savings account, the gross receipts from the duplicate statement fee are not subject to tax.

All charges relating to a “checking account” are taxable, not only those charges relating to withdrawals from the account by check. For example, charges for withdrawals by “bank card” from a checking account would be subject to tax. Charges for withdrawals by bank card from a “savings account” would not be subject to tax.

26.8(3) Various taxable charges. The following are nonexclusive examples of bank or financial institution service charges which, if related to checking accounts, are subject to tax:

- a.* Fees for transferring funds from one account to another (if billed to a checking account).
- b.* Stop payment charges.
- c.* Debit card replacement fees.
- d.* Copy and research fees.
- e.* Bill payment fees.
- f.* Returned deposit item fees.
- g.* The fee for issuing a “certified” check. A “certified” check is drawn from a particular account. This is in contrast to a “bank cashier’s” check. See below.

26.8(4) Bank and financial institution service charges not subject to tax. The following bank and financial institution service charges are representative of those which are usually not subject to tax by virtue of their having no relationship to checking accounts. The list is not exclusive:

- a.* Safe deposit box fees for safe deposit box rentals.
- b.* Mortgage and loan fees.

c. Fees charged by trust departments for probating estates or administering trusts, for administering agency accounts, for administering pension and profit-sharing plans, for serving as a stock transfer agent or registrar, for serving as a farm manager, and fees or commissions charged to customers for handling security transactions. However, see rule 26.7(422). As of July 1, 1987, some of their services may be taxable as "investment counseling."

d. Real estate appraisal fees. Fees collected for servicing real estate loans.

e. Fees for servicing real estate loans.

f. Fees charged for contract collection and other collections not related to the maintenance of a checking account.

g. Special lockbox handling charges.

h. Escrow agent fees.

i. Charges for handling and cashing coupons or certificates kept in the bank's possession (safe-keeping charges).

j. Finance charges, including credit card charges.

k. Penalty charges (interest forfeiture) on early withdrawal for savings certificates.

l. Charges for purchasing or selling securities for customers (if not a disguise for investment counseling fees).

m. Fees charged for collecting and transferring mortgage payments for a customer (real estate collection exchange).

n. Charges for traveler's or similar type checks, bank cashier's checks, bank drafts, or money orders when these instruments have no relation to a customer's checking account.

o. Exchange fees for all check exchanges.

26.8(5) Miscellaneous. Fees charged to a checking account depositor which are, in essence, penalties for a depositor's failure to adhere to contractual obligations with a bank or financial institution are not subject to tax, being more in the nature of "penalties" than service charges. For example, charges for overdrafts and returned checks would not be subject to tax.

Bank service charges which are never assessed against the expense of maintaining a checking account are not subject to tax.

EXAMPLE: Bank B normally charges \$10 per month for individual customer's checking accounts. However, if a customer maintains an average monthly balance of at least \$750, the bank will charge only a \$5 service fee. Customer C maintains an average balance in an account of \$1,000 during the month of February. As a result of this, Bank B charges Customer C a service charge of \$5, and Customer C never owes Bank B a service charge of \$10. Customer C owes sales tax on the \$5 rather than the \$10 amount.

701—26.9(422) Barber and beauty. Persons engaged in the business of hair cutting, hair styling, hair coloring, wig care, manicuring, pedicuring, applying facial and skin preparations, and all like activities which tend to enhance the appearance of the individual are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. Each "barber, beauty or other beautification shop or establishment" shall receive only one permit and remit tax as one enterprise, when operated under a common management.

When an operator leases space and is an independent operator, the lessee shall notify the department and secure a sales tax permit whereby the lessee will be responsible directly for the sales tax due. In order to be considered independent, the lessee must also be independent from the lessor for the purposes of withholding of income tax, unemployment compensation, and social security taxes.

The lessor who has leased a part of the premises shall report to the department the names and addresses of all lessees. If the lessor is accounting for the lessee's sales, the lessor shall, after the name of each lessee, show the amount of net taxable sales made by the lessee on each report to the department, and which net taxable sales are included in the lessor's return. See 701—15.11(422,423).

This rule is intended to implement Iowa Code section 422.43.

701—26.10(422) Boat repair. Persons engaged in the business of repairing watercraft are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include any type of restoration, renovation or replacement of any motor, engine, working part, accessory, hull or interior of the watercraft, but shall not include installation of new parts or accessories which are not replacements added to such watercraft.

701—26.11(422) Car and vehicle wash and wax. Prior to July 1, 1992, "car wash and wax" was the only type of vehicle washing and waxing which was a taxable service.

On and after July 1, 1992, all "vehicle wash and wax" is subject to tax. The gross receipts from these services shall be taxable whether they are performed by hand, machine or coin-operated devices. A "car" is any self-propelled motor vehicle designed primarily for carrying passengers (nine or fewer) excluding motorcycles and motorized bicycles. Any pickup truck, designed to carry both passengers and cargo, is a "car" for the purposes of this rule. A "vehicle" is any vehicle which is commonly used on a highway and propelled by any power other than muscular power. By way of nonexclusive example, motorcycles, motorized bicycles, all pickup trucks, tractors, and trailers are "vehicles" for the purposes of this rule.

This rule is intended to implement Iowa Code subsection 422.43(1).

701—26.12(422) Carpentry. Persons engaged in the business of repairing, as a carpenter, as the trade is known in the usual course of business, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Such structures may be either real or personal property.

701—26.13(422) Roof, shingle and glass repair. Persons engaged in the business of repairing, restoring or renovating roofs or shingles, or restoring or replacing glass, whether such glass is personal property or affixed to real property, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.14(422) Dance schools and dance studios. The gross receipts from services rendered, furnished or performed by dance schools or dance studios are subject to tax. A "dance school" is any institution established primarily for the purpose of teaching any one or more types of dancing. A "dance studio" is any room or group of rooms in which any one or more types of dancing are taught. If other activities such as acrobatics, exercise, baton twirling, tumbling or modeling are taught in dance schools, the gross receipts from the teaching of such activities are subject to tax.

701—26.15(422) Dry cleaning, pressing, dyeing and laundering. Persons engaged in the business of rendering, furnishing or performing dry cleaning, pressing, dyeing and laundering services, including those who engage in business by means of coin-operated washers, irons or mangles, dryers and dry cleaning machines are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. *Rodee, Inc. et al. v. State Tax Commission*, Equity No. 72674, Polk County District Court, December 12, 1968.

701—26.16(422) Electrical and electronic repair and installation. Persons engaged in the business of repairing or installing electrical wiring, fixtures, switches in or on real property or repairing or installing any article of personal property powered by electric current are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For purposes of this rule only, that electrical portion of the repair and installation of personal property powered by electric current is subject to tax. “Repair” is synonymous with mend, restore, maintain, replace, or service. A “repair” contemplates an existing structure or thing which has become imperfect and constitutes the restoration to the original existing structure that which has been lost or destroyed. A “repair” is not a capital improvement, that is, it does not materially add to the value or substantially prolong the useful life of the property. “Installation” shall include affixing electrical wiring, fixtures or switches to real property, affixing any article of personal property powered by electric current to any other article of personal property, or making any article of personal property powered by electric current operative with respect to its intended functional purpose. For purposes of 26.2(1), service tax shall not apply on electrical installation or repair when the service is on or connected with a structural change to a building or similar structure, whether the structural change be internal or external to the building or structure. The electrical repair or installation on or connected with new construction on buildings or structures would not be subject to service tax.

On and after July 1, 1984, the services of electronic repair and installation are subject to tax. “Electronic” repair and installation is that which deals with the installation of semiconductors (e.g., vacuum tubes, transistors, or integrated circuits) or with the installation or repair of machinery or equipment which functions mainly through the use of semiconductors. It is this installation or repair of semiconductors or of machines functioning mainly by the use of semiconductors which distinguishes “electronic” installation and repair from “electrical” installation and repair.

On and after July 1, 1985, gross receipts from electrical or electronic installation are exempt from tax if those gross receipts are for the installation of new industrial machinery or equipment. See 701—subrule 18.45(7) for more information regarding this matter.

This rule is intended to implement Iowa Code section 422.43.

701—26.17(422) Engraving, photography and retouching. Prior to July 1, 1984, persons engaged in the business of engraving on wood, metal, stone or any other material, taking photographs, or renovating or retouching an existing likeness or design are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Photography” is the art or process of producing images or objects upon a photosensitive surface by the chemical action of light or other radiant energy. For treatment of these services on and subsequent to July 1, 1984, see rule 701—16.51(422,423).

701—26.18(422,423) Equipment and tangible personal property rental.

26.18(1) *Prior to July 1, 1984, only if tangible personal property was classified as “equipment” was its rental subject to tax. Effective July 1, 1984, the rental of all tangible personal property, including equipment, is subject to tax.*

a. Periods prior to July 1, 1984, equipment rental. Persons furnishing equipment to other persons for their use are rendering, furnishing, or performing a service subject to tax measured by the gross receipts or fees charged for the use of such equipment. In general usage, equipment refers to implements or tools used to produce a final product or achieve a given result. *KTVO, Inc. and KBIZ, Inc. v. Bair*, 255 N.W.2d 111 (Iowa 1977), and *State v. Bishop*, 257 Iowa 336 (1965). Not all tangible personal property is equipment and for the purpose of this rule, equipment will be considered to be an implement or a tool used to produce a final product or to achieve a given result. Thus, “equipment rental” would be applicable to such items as appliances, machinery, and utensils necessary to carry out a given task. It also includes such nonexclusive items as articles of clothing, safety shoes, police uniforms, and hard hats which contribute to the purpose of a person obtaining them for use. Whether the equipment rented functions in a state of rest or in a state of motion, it is taxable.

b. In order to determine whether a particular fee is charged for the use of equipment or for the rendering of a nontaxable service, the department looks at the substance, rather than the form, of the service being rendered. When the possession and use of equipment by the recipient is merely incidental as compared to the nontaxable service performed, all the gross receipts are derived from the furnishing of such nontaxable service and unless a separate fee or charge is made for the possession and use of equipment, no gross receipts are derived from the service of equipment rental. When the nontaxable service is merely incidental to the possession and use of the equipment by the recipient, all the gross receipts are derived from the furnishing of equipment rental and unless a separate fee or charge is made for the nontaxable service, no gross receipts are derived from the nontaxable service. When an equipment rental agreement contains separate fee schedules for rent and for nontaxable service, only the gross receipts derived from the equipment rental service are subject to tax. This rule is not to be so construed as to be a variance with Iowa Code subsection 422.45(2) concerning transportation.

c. When equipment as defined herein is rented for a flat fee per month, per year, or for other designated periods, plus an additional fee based on quantity and capacity of production or use, the entire charge is taxable. The only exception is if the additional fee is a royalty payment. A royalty fee is not subject to tax if (a) it is separately contracted for and separately stated in the contract or on the billing, and (b) the royalty represents a true royalty. In determining whether a particular payment constitutes a true royalty, the following will be considered:

1. The intentions of the parties to the transaction.
2. The existence of a patent.
3. The relationship between the size of the royalty payment and the gross sales or manufacture of the patented equipment.
4. The primary business of the lessor.
5. Whether the royalty was paid for the technical know-how of the patented equipment.
6. Whether the royalty was paid for the privilege of using the patented equipment.

When examining the equipment rental agreement, substance will prevail over form and terminology employed by the parties to the agreement will not, in itself, be determinative of whether a true royalty exists. See *State v. Rockaway Corp.* (Ala. Civ. App. 1977), 346 So.2d 444, Cert. denied, 346 So.2d 451 (Ala. 1977).

d. The portion of this subrule relating to fees based on quantity and capacity of production use is effective for periods beginning on or after July 1, 1978.

26.18(2) *For periods beginning July 1, 1984, rental of tangible personal property.* The gross receipts from the rental of all tangible personal property shall be subject to tax. Tangible personal property is any personal property which is visible and corporeal, has substance and body or can be touched or handled. *RAMCO Inc. v. Director, Department of Revenue*, 248 N.W.2d 122 (Iowa 1976). Electromagnetic waves and other types of waves are not tangible personal property. *RAMCO Inc. supra*. Thus, the receipt of signals from a pay television company does not involve the rental of tangible personal property. See *Indiana Dept. of State Revenue, Sales Tax Division v. Cable Brazil Inc.*, 380 N.E.2d 555 (Ind. App. 1978). At common law, rental consists of consideration paid for the use or occupation of property, but not for passage of title, Black's Law Dictionary 1461 (4th Ed. 1968).

a. Rentals not taxed under previous law. Prior to July 1, 1984, only if tangible personal property consisted of "equipment" was its rental taxable. Equipment rental continues to be a service subject to tax under the present law. Equipment refers to implements or tools used to produce a final product or achieve a given result. *KTVO, Inc. and KBIZ, Inc. v. Bair*, 255 N.W.2d 111 (Iowa 1977) and *State v. Bishop*, 257 Iowa 336 (1965). The rental of certain tangible personal property not considered to be equipment is now subject to tax. As nonexclusive examples, clothing rental, such as tuxedos and formal gown rental, or costume rental; picture, painting, sculpture and other art work rental; plant rental to homes or businesses; and furniture rental are now subject to tax.

b. Rental of real property distinguished from rental of tangible personal property. If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incident to that contract, tangible personal property is provided which allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the gross receipts are for the rental of real property and are not subject to tax.

If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property's use, the gross receipts from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

c. Rental of tangible personal property and rental of fixtures. The rental of tangible personal property which shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property which is connected to real property in a way that it cannot be removed without damage to itself or to the real property is a fixture, *Equitable Life Assurance Society of the United States v. Chapman*, 282 N.W. 355 (Iowa 1983) and *Marty v. Champlin Refining Co.*, 36 N.W.2d 360 (Iowa 1949). Prior to July 1, 1987, the rental of a mobile home, not sufficiently attached to realty to constitute a fixture, is the rental of tangible personal property and subject to tax, *Broadway Mobile Home Sales Corp. v. State Tax Commission*, 413 N.Y.S.2d 231 (N.Y. 1979). For the treatment of mobile home rental on and after that date see rule 701—18.40(422,423).

d. *Rental of tangible personal property embodying intangible personal property rights, transactions exempt and taxable.* Under the law, the gross receipts from rental of tangible personal property include “royalties, and copyright and license fees.” The department interprets the legislature’s use of this phrase as evidence of the legislature’s intent to tax the rental of all property which is a tangible medium of expression for the intangible rights of royalties, copyright and license fees. Thus gross receipts from the rental of films, video disks, video cassettes, and any computer software (other than rental of custom programs, see 701—paragraph 18.34(3) “a”) which is the tangible means of expression of intangible property rights is subject to tax. The rental of such tangible property shall be subject to tax whether the property is held for rental to the general public or for rental to one or a few persons. See *Boswell v. Paramount Television Sales, Inc.*, 282 So.2d 892 (Ala. 1973). See rule 17.18(422,423) regarding the exemption from the requirements of this subrule for rental of films, video tapes and other media to lessees imposing a taxable charge for viewing or rental of the media or to lessees who broadcast the contents of this media for public viewing or listening.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—26.19(422) Excavating and grading. Persons engaged in the business of excavating and grading for purposes other than new construction, reconstruction, alteration, expansion or remodeling are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.19(1) For purposes of this rule, “*excavation*” shall mean the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. The word excavate ordinarily comprehends not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface. *Rochez Brothers v. Duricka*, 374 Pa. 262, 97 A.2d 825 (1953).

26.19(2) “*Grading*” shall mean, in its commonly accepted sense, a physical change of the earth’s structure by scraping and filling in the surface to reduce it to a common level; the reducing of the surface of the earth to a given line fixed as the grade, involving excavating or filling or both.

When it is determined that the enumerated service of excavating or grading is present, the situation must be further examined to determine if the new construction exemption applies. See chapter 248(9), Acts of the Sixty-third General Assembly.

701—26.20(422) Farm implement repair of all kinds. Persons engaged in the business of repairing, restoring or renovating implements, tools, machines, vehicles or equipment, but not including installation of new parts or accessories which are not replacements, used in the operation of farms, ranches or acreages on which growing crops of all kinds, livestock, poultry or fur-bearing animals are raised or used for any purpose are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.21(422) Flying service. Persons engaged in the business of teaching a course of instruction in the art of operation and flying of an airplane, and instructions in repairing, renovating, reconditioning an airplane, or any other related service are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. While not intended to be inclusive, the following is a list of taxable and nontaxable charges related to flight instruction.

Charges for instructors’ services, ground instruction and ground school are taxable.

Charges for dual flying and for students learning to fly with an instructor are taxable. The instruction is taxable as a flying service. The plane rental is also taxable. This paragraph shall become effective for periods beginning on or after April 1, 1992.

Flying service shall also include all other types of flying service, except agricultural aerial application services, aerial commercial and chartered transportation services and those services exempt by 26.2(3).

This rule is intended to implement Iowa Code section 422.43.

701—26.22(422) Furniture, rug, upholstery, repair and cleaning. Persons engaged in the business of repairing, restoring, renovating or cleaning furniture, rugs or upholstery are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Wherever used, “furniture” shall include all indoor and outdoor furnishings. “Rugs” shall include all types of rugs and carpeting. “Upholstery” shall include all materials used to stuff or cover any piece of furniture.

701—26.23(422) Fur storage and repair. Persons engaged in the business of storing for preservation and future use, refurbishing, repairing and renovating, including addition of new skins and furs, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The term “furs” shall include both natural and manufactured simulated products resembling furs.

701—26.24(422) Golf and country clubs and all commercial recreation. All fees, dues or charges paid to golf and country clubs are subject to tax. “Country clubs” shall include all clubs or clubhouses providing golf and other athletic sports for members. Persons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Recreation” shall include all activities pursued for pleasure, including sports, games and activities which promote physical fitness, but shall not include admissions otherwise taxed under Iowa Code section 422.43.

Dance schools are the only schools the services of which are taxable under Iowa Code subsection 422.43(9). See rule 26.14(422) on dance schools and dance studios. The gross receipts from any school providing training services in any activity pursued for pleasure or recreation shall not be subject to tax, unless the school is a dance school.

If a person provides both facilities for recreation and instruction in recreational activities, charges for instruction in the recreational activities shall not be subject to tax if all of the following circumstances exist:

1. The instruction charges are contracted for separately, separately billed, and reasonable in amount when compared to the taxable charges of providing facilities for recreation.

EXAMPLE: An ice skating rink offers three membership plans. The first membership plan provides only instruction in the activity of ice skating. The second plan allows for the use of the rink’s facilities, but provides for no instruction in ice skating. The third plan allows the customer to participate in a certain number of ice skating classes and also allows use of the rink’s facilities without instruction. Customer charges for the first plan would not be subject to tax. Customer charges for the second plan would be subject to tax. Charges for the third plan would be subject to tax if billed in one lump-sum. If, under the third plan, charges to the customer for instruction and use are separately stated, and the charges for instruction are not unreasonable, the charges for instruction shall be exempt from tax. If it is necessary to pay for instruction to secure use of the facilities for recreation, charges for the instruction are a part of the gross receipts from commercial recreation and shall be subject to tax.

2. The persons receiving the instruction must be under the guidance and direction of a person training them in how to perform the recreational activity. If the persons receiving what purports to be “instruction” are allowed any substantial amount of time to pursue recreational activities, no instruction is taking place. The instruction should be received in what would ordinarily be thought of as a “class” with a fixed time and place for meeting. The instruction need not be received in what would ordinarily be thought of as a “classroom,” but the instructor and the persons receiving instruction should be segregated from persons engaging in recreational activity insofar as this is possible. Instruction may still occur if complete or partial segregation is impossible.

EXAMPLE: A golf pro offers instruction to students on a golf course. The students cannot circulate around the golf course in a group with the golf pro because this would slow the play of golfers following such a group and lead to complaints. The students circulate on the course individually, and the golf pro observes the play of each student and comments upon it. Even though no segregation of the individual students into any sort of a class is possible, the students are receiving instruction from the golf pro and, therefore, no taxable event occurs.

EXAMPLE: A retailer maintains a golf driving range. There are separate tee-off positions for each customer to practice driving golf balls. There is also an instructor in driving present. The instructor cannot reserve individual tee-off positions for instruction of students because the positions are filled on a first-come-first-served basis. When students come for instruction, the instructor must make use of whatever tee-off positions are available. Even though segregation of students from other customers is impossible, instruction exists and, therefore, no taxable event occurs.

3. The “instruction” must impart to the learner a level of knowledge or skill in the recreational activity which would not be known to the ordinary person engaging in the recreational activity without instruction. Also, the person providing the instruction must have received some special training in the recreational activity taught if charges for that person’s instruction are to be exempt from tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.25(422) House and building moving. Persons engaged in the business of moving houses or buildings from one location to another, whether for repair or otherwise, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Charges for house and building moving are not considered transportation charges, and are, therefore, subject to the imposition of sales tax.

This rule is intended to implement Iowa Code section 422.43.

701—26.26(422) Household appliance, television and radio repair. Persons engaged in the business of repairing household appliances, television sets, or radio sets, but not including installation of new parts or accessories which are not replacements, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Repair” shall include mending or renovation of existing parts of such household appliances, television sets and radio sets, as well as replacing defective parts of such articles. “Household appliances” shall include all mechanical devices normally used in the home, whether or not used therein.

701—26.27(422) Jewelry and watch repair. Persons engaged in the business of repairing jewelry or watches are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Jewelry or watch repair” shall include any type of mending, restoration or renovation of parts, or replacement of defective parts.

701—26.28(422) Machine operators. Persons engaged in the business of operating machines of all kinds, belonging to other persons, where a fee is charged, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Machine operator” is a person who exercises the privilege of managing, controlling and conducting a mechanical device or a combination of mechanical powers and devices used to perform some function and produce a certain effect or result.

This rule is intended to implement Iowa Code section 422.43.

701—26.29(422) Machine repair of all kinds. Persons engaged in the business of repairing machines of all kinds are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Machine” shall include all devices having moving parts and operated by hand, powered by a motor, engine, or other form of energy. It is a mechanical device or combination of mechanical powers and devices used to perform some function and produce a certain effect or result. A musical instrument does not constitute a machine and therefore, musical instrument repairs are not subject to tax.

701—26.30(422) Motor repair. Persons engaged in the business of repairing motors powered by any means whatsoever are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Repair” shall include mending or renovation of parts, replacements of defective parts or subassemblies of the motor, but shall not include installation of new parts or accessories which are not replacements.

701—26.31(422) Motorcycle, scooter and bicycle repair. Persons engaged in the business of repairing motorcycles, scooters and bicycles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Repair” shall include mending or renovation of parts, replacement of defective parts or subassemblies, but shall not include installation of new parts or accessories which are not replacements.

701—26.32(422) Oilers and lubricators. Persons engaged in the business of oiling, changing oils or lubricating and greasing vehicles and machines of all types having moving parts or powered by a motor or engine or other form of energy, heavy equipment vehicles or implements, whether such equipment functions in a state of rest or in a state of motion, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.33(422) Office and business machine repair. Persons engaged in the business of repairing office and business machines are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Repair” shall include mending and renovation of existing parts, replacement of defective parts or subassemblies, but shall not include installation of new parts or accessories which are not replacements.

701—26.34(422) Painting, papering and interior decorating. Persons engaged in the business of painting, papering and interior decorating are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Painting” shall mean covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant, with some suitable liquid to form a solid adherent when spread on in thin coats for decoration, protection or preservation purposes and all necessary preparations thereto, including surface preparation. The following are not within the definition of painting: automobile undercoating, the coating of railroad cars, storage tanks, or the plating of tangible personal property with metals such as but not limited to chromium, bronze, tin, galvanized metal, or platinum. “Papering” shall mean applying wall-paper or wall fabric to the interior of houses or buildings and all necessary preparations thereto including surface preparation. “Interior decoration” shall mean the service of designing or decorating the interiors of houses or buildings, counseling with respect to such designing or decoration or the procurement of furniture fixtures or home or building decorations. When any person provides interior decorating service without charge as an incident to the sale of real or personal property, no sales tax, in addition to that paid on the purchase price or any part thereof of the personal property, shall be charged.

This rule is intended to implement Iowa Code section 422.43.

701—26.35(422) Parking facilities. Persons engaged in the business of operating a parking facility for a fee are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For the purpose of this rule, a “parking facility” is any place that is built, installed or established for the purpose of parking a vehicle for a fixed interval. It is irrelevant whether the charge is by the hour, day, month or any other period of time.

This rule is intended to implement Iowa Code section 422.43.

701—26.36(422) Pipe fitting and plumbing. Persons engaged in the business of pipe fitting and plumbing are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Pipe fitting and plumbing” shall mean the trade of fitting, threading, installing and repairing of pipes, fixtures or apparatus used for heating, refrigerating, air conditioning or concerned with the introduction, distribution and disposal of a natural or artificial substance.

701—26.37(422) Wood preparation. Persons engaged in the business of wood preparation or treatment for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Wood preparation” shall include all processes whereby wood is sawed from logs into measured dimensions, planed, sanded, oiled or treated in any manner before being used to repair an existing structure or create a new structure or part thereof. But where such preparation is engaged in solely for the purpose of processing lumber or wood products for ultimate sale at retail, such “preparation” may not be deemed as rendering, furnishing or performing a service, the gross receipts from which would be subject to tax.

701—26.38(422) Private employment agency, executive search agency. Private employment agencies engaged in the business of providing listings of available employment, counseling others with respect to future employment or aiding another in any way to procure employment are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The aforementioned services are subject to tax, regardless of whether they are rendered for the prospective employee or prospective employer.

For periods commencing after June 30, 1982, the gross receipts of private employment agencies from services rendered for placing a person in employment where the person's principal place of employment is to be located outside the state of Iowa are not taxable. Principal place of employment ordinarily means the work location of the employee.

EXAMPLE: ABC Company contracts with XYZ, an Iowa employment agency, to secure an employee to work at a production plant in Illinois. XYZ Employment Agency finds a suitable employee that is hired by ABC Company. Since the employee's principal place of employment is outside the state, there is no tax due on the gross receipts of XYZ Employment Agency for securing that employment.

EXAMPLE: Hometown Sales Company contracts with ABC Employment Agency to secure a salesperson to travel Iowa, Missouri and Nebraska. Both Hometown Sales Company and ABC Employment Agency are located in Iowa. ABC Employment Agency is successful in finding a salesperson for Hometown Sales Company. Since this salesperson will be traveling in three states the gross receipts of ABC Employment Agency from placing the employment of this salesperson are taxable as the principal place of the salesperson's employment is not outside the state of Iowa.

Executive search agencies are engaged in the business of securing employment for top level management positions. Effective July 1, 1984, the gross receipts from services provided by executive search agencies are subject to tax. For any period prior to that date, their gross receipts are not taxable. The exclusion from taxation for the service of placing a person in employment if that person's principal place of employment is to be located outside of which is applicable to private employment agencies is not applicable to executive search agencies. The gross receipts from the services of executive search agencies performed in Iowa are subject to tax.

The following nonexclusive elements distinguish the difference between executive search agencies and private employment agencies. These elements should be used to distinguish between taxable and nontaxable services for any period prior to July 1, 1984.

Executive Search Firm	Employment Agency
1. Top level management positions— Salaries over \$30,000.	All levels of jobs in an organization. All salary levels.
2. Serve only a few clients (5 or 6) at one time. Employers only.	Large number of clients at all times. Both possible employers and employees.
3. Send information regarding one individual to one possible employer only. Résumés never circulated to other possible employers.	Individual's résumé circulated to many possible employers.
4. Extensive analysis of the position to be filled. Extensive analysis of the individuals who are candidates. Prepare detailed professional assessment of strengths and weaknesses of individuals.	No extensive analysis of the position or the individual.

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| 5. Make travel arrangements for interviews; conduct salary negotiations; perform follow-up studies. | Normally does not make travel arrangements for interviews; does not conduct salary negotiations; does not perform detailed follow-up studies. |
| 6. Only paid by the company seeking the employee. | Paid by either the company or the job seeker. |
| 7. Paid on retainer or by an hourly charge or by contract. Paid whether or not individual is hired. | Paid on a contingent-fee basis. Paid only if a referred person is hired. |
| 8. Does not advertise available positions. | Does engage in general advertising of available positions. |
| 9. Overall placement of individual requires extensive and sophisticated analysis of position and individual. | Overall placement of individual is not as extensive or sophisticated. |

This rule is intended to implement Iowa Code section 422.43.

701—26.39(422) Printing and binding. Prior to July 1, 1984, persons engaged in the business of printing or binding any printed matter other than for the purpose of ultimate sale at retail are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Printing” shall include any type of printing, lithographing, mimeographing, photocopying, and similar reproduction. The following activities are representative of services, the gross receipts from which are subject to tax: the printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters, and banners for the users thereof. For the treatment of printing and binding on and after July 1, 1984, see rule 701—16.51(422,423).

701—26.40(422) Sewing and stitching. Persons engaged in the business of sewing and stitching are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.41(422) Shoe repair and shoeshine. Persons engaged in the business of repairing or shining any type of footwear, such as shoes, boots and sandals, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Repair” shall include the mending or renovation of existing parts and the replacement of defective parts, but shall not include installation of new parts or accessories which are not replacements of the footwear in any manner. “Shoeshine service” is meant to be the shining of any type of footwear.

701—26.42(422) Storage warehousing, storage locker, and storage warehousing of raw agricultural products and household goods.

26.42(1) Definitions.

a. For the purpose of this rule, raw agricultural products include, but are not limited to, corn, beans, oats, milo, fruits, vegetables, animal semen, and like items that have not been subjected to any type of processing. Grain drying is not processing.

b. A “warehouse” is defined as an enclosure not readily accessible to the public, which would normally require a roof of some sort or some type of structure designed to afford protection to the products. Placing the products on the ground, even though surrounded by a fence, would not constitute a warehouse. *Lynch v. State*, 1889, 89 Ala. 7 So. 829.

c. “Household goods” means tangible personal property located in a person’s residence, and is not inventory.

d. For the purpose of this rule, the term “principal” shall refer to the person who ships raw agricultural products or household goods to the warehouse, or the person who is billed by the warehouse for service performed. The term “purchaser” shall refer to the person who purchases the goods from the principal.

26.42(2) *Taxation of household goods.* Beginning April 1, 1992, the gross receipts on the storage of household goods in a warehouse are subject to tax.

a. For the purposes of this rule, storage in transit (S.I.T. storage), consists of household goods stored for less than 180 days. Permanent storage consists of household goods stored for 180 days or more.

b. Storage in transit with an origin in Iowa and a destination outside Iowa is exempt from tax.

c. Storage in transit with an origin outside the state of Iowa and a destination in Iowa is subject to tax.

d. Storage in transit with an origin and destination within Iowa is subject to tax.

26.42(3) *Storage and delivery.*

a. *Raw agricultural products or household goods originating inside the state and delivered inside the state.* Assuming the raw agricultural products or household goods originate in Iowa, are stored in an Iowa warehouse and, after storage, are delivered to a destination in Iowa, the tax is imposed on storage pursuant to Iowa Code section 422.43. The interstate commerce exemption in Iowa Code section 422.42, subsections 13 and 16, is not applicable.

b. *Raw agricultural products or household goods originating outside the state and delivered inside the state.* Assuming the raw agricultural products or household goods originate from a principal outside the state of Iowa, are sent to an Iowa warehouse and, after storage, are delivered to a destination in Iowa; tax on these warehouse services has been imposed since October 1, 1967, and there is no interstate commerce exemption, either under the United States Constitution, or under the statutory exemption for services performed on tangible personal property delivered into interstate commerce. The delivery, in this example, is clearly intrastate and the storage is subject to tax. *Iowa Movers and Warehousemen’s Association v. Briggs*, 237 N.W.2d 759 (Iowa 1976).

c. *Raw agricultural products or household goods originating inside or outside of the state and shipped by the warehouse out of Iowa.* Assuming the raw agricultural products or household goods originated either in Iowa or outside of Iowa, are shipped to an Iowa warehouse and, after storage, are sent by the warehouse directly out of Iowa or are given to a common carrier to be shipped out of Iowa, with destination being out of Iowa; the storage of the raw agricultural products or household goods is exempt.

d. *Raw agricultural products or household goods originating either inside the state or outside the state and the principal or purchaser of the raw agricultural products picks them up at the Iowa warehouse.* Assuming the raw agricultural products or household goods originated either in Iowa or out of Iowa, and are sent to an Iowa warehouse for storage and, upon the completion of the storage, the principal directs the warehouse to allow the purchaser of the raw agricultural products or household goods to pick them up at the Iowa warehouse; the warehouse service would be subject to Iowa sales tax.

This example involves a situation similar to the one found in *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968).

In that case, the court held that where the sale of goods is made by an Iowa principal, delivery of the goods physically made to the purchaser in Iowa constitutes an intrastate delivery, and the Iowa sales tax applies. Therefore, where physical delivery of goods in the form of transfer of possession is made from the Iowa warehouse directly to the principal or the purchaser, such direct delivery constitutes a delivery into intrastate commerce and the warehouse services performed on these goods would be subject to Iowa sales tax.

26.42(4) Other charges invoiced separately.

a. Transportation. The gross receipts from the sale, furnishing, or service of transportation services are exempt from the Iowa sales and use taxes under Iowa Code subsection 422.45(2). This would include delivery charges which are itemized or shown separately on the customer's invoice.

b. Handling. A charge assessed for labor and equipment used to unload rail cars, trucks, or other vehicles, place the raw agricultural products or household goods in storage and remove from storage and load rail cars, trucks, or other vehicles. Handling charges billed after October 1, 1967, are exempt as transportation charges if they are itemized or shown separately on the customer's invoice. If handling charges are not ascertainable on the invoice, the total amount thereon is deemed to be storage and, therefore, taxable.

c. Clerical. A charge assessed for special services such as, but not limited to, compiling stock reports and statements, reporting serial numbers, physical checking of raw agricultural products, and reporting by special report of receipt transactions and shipments. If such charges are predominantly related to storage, they are subject to tax. If clerical charges are predominantly related to transportation activities, they are exempt from tax.

d. Communications. A charge assessed for postage, telephone, teletype, or telegram, and for other than normal communication at the request of the customer. If such charges are predominantly related to storage, they are subject to tax. If communication charges are predominantly related to transportation activities, they are exempt from tax.

e. Car cleaning. A charge assessed for cleaning rail cars of bracing and debris as required by the Interstate Commerce Commission. This is related to transportation activities and not subject to tax.

f. Recouping. A charge assessed for handling merchandise damaged in transit so as to prevent further loss due to transit damage. This is predominantly a charge for storage and is subject to tax unless it can be shown that it is predominantly related to transportation.

g. Dunnage and bracing. A charge assessed for labor and material used in blocking and bracing in rail cars and trucks; blocking and bracing are necessary to protect or prevent movement of raw agricultural products or household goods while in transit. This charge is separate from the storage charge and is related to transportation. Therefore, it is not subject to tax.

h. Extra labor. A charge assessed for other-than-normal handling, such as shipping or receiving, during other-than-usual business hours. This charge is predominantly related to transportation and, when separately listed from storage, is not subject to tax.

i. Bonded custom charges. A charge assessed in addition to regular rates for merchandise being held under United States Custom Bond. This is considered a tariff on foreign goods entering the country and is not subject to tax.

j. Trash disposal. See rule 701—26.71(422,423).

k. *Cartage*. A charge assessed for transporting raw agricultural products or household goods from the storage facility to the customer's place of business or residence, or from the customer's place of business or residence to the storage facility, or from one place of business to another, or from one residence to another. This is a transportation charge and is not subject to tax.

l. *Crating*. This is a charge for packing and wrapping. If predominantly related to storage, it is taxable; if it is predominantly related to transportation, it is exempt.

m. *Canning and bagging*. A charge assessed for receiving raw agricultural products or household goods in bulk, unloading, and placing in containers, such as bottles, bags, cans, or drums. If this service is predominantly related to storage, it is subject to tax. If this service is predominantly related to transportation, it is exempt from tax.

n. *Unpacking*. This would be predominantly related to storage and subject to tax, unless it can be shown to be predominantly related to transportation.

26.42(5) *Wrapping and packaging*.

a. Wrapping and packaging services performed on raw agricultural products or household goods are taxable or exempt, depending upon whether the predominant service is storage or transportation. *Iowa Movers and Warehousemen's Association* supra.

b. Wrapping, packing and packaging predominantly for storage of merchandise is subject to tax unless the interstate commerce exemption is applicable.

c. Warehouses which sell packing materials to their customers are considered retailers of these materials and should collect sales tax. When the packaging materials are not billed separately to the customer, the warehouse will be subject to the standards set forth in rule 701—18.31(422,423) regarding tangible personal property purchased for use in performing services.

26.42(6) *Transit warehouses*. The department recognizes that the operations of transit warehouses present some administrative difficulties in the collection of sales taxes. Raw agricultural products or household goods are shipped to transit warehouses in bulk quantities and shipped to different locations at different times. Storage of raw agricultural products or household goods delivered in Iowa would be subject to tax, while storage of raw agricultural products or household goods placed into interstate commerce would be exempt from tax. Since it is extremely difficult under these circumstances to determine the cost of storage on raw agricultural products or household goods delivered in Iowa, the department will allow transit warehouses to compute tax on storage fees on the basis of a formula, the numerator of which is the quantity of raw agricultural products or household goods stored in the warehouse with intrastate delivery in Iowa, and the denominator of which is the total quantity of goods stored in the warehouse. This information, in most cases, must be supplied by principals storing goods in the warehouse. However, it is the responsibility of the warehouse to acquire the information needed to compute the Iowa sales tax under the formula. This information should be verified with the principal at least once every 90 days. Included in the numerator of the formula will be raw agricultural products or household goods picked up at an Iowa warehouse by a principal or purchaser, or raw agricultural products or household goods delivered to a principal or purchaser in Iowa even though the principal or purchaser may subsequently deliver the raw agricultural products or household goods to a common carrier for shipment outside Iowa.

26.42(7) Government storage. Storage of raw agricultural products or household goods is exempt from tax if the storage contract is with a tax-certifying or tax-levying body of the state of Iowa or to any instrumentality of the state, county, or municipal government, or with the federal government or its instrumentalities. Storage fees relating to raw agricultural products or household goods placed in storage by the producer and later consigned to the federal government under a loan agreement are not exempt from tax. In order for the storage to be exempt from tax, the federal government must actually own the raw agricultural products or household goods during the period the goods are stored and make payment to the warehouse for the storage.

Also refer to *Iowa Movers and Warehousemen's Association v. Briggs*, Equity No. 75910, Polk County District Court, May 8, 1974, and 237 N.W.2d 759.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—26.43(422) Telephone answering service. Persons engaged in the business of providing telephone answering service, whether by person or machine, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.44(422) Test laboratories. Persons engaged in the business of providing laboratory testing of any substance for any experimental, scientific or commercial purpose, except for tests on humans, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Included within the meaning of the phrase “test laboratories” are mobile testing laboratories and field testing by test laboratories. Test laboratory services performed on animals on or after July 1, 1991, are also exempt from tax.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

***701—26.45(422) Termite, bug, roach, and pest eradicators.** Persons engaged in the business of eradicating or preventing the infestation by termites, bugs, roaches, and all other living pests are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. Persons who eradicate, prevent, or control the infestation of any type of pest by spraying or other means are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. Included in the performance of this taxable service are persons who eradicate, prevent, or control pest infestations in farmhouses, in outbuildings (such as machine and livestock buildings) and in other structures (such as grain bins) used in agricultural production. However, persons who spray cropland used in agricultural production to eradicate or prevent infestation of the cropland by pests are performing a service which is not taxable. See 701—subrule 17.9(3) for a definition of “agricultural production.”

701—26.46(422) Tin and sheet metal repair. Persons engaged in the business of repairing tin or sheet metal, whether the same has or has not been formed into a finished product are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.47(422) Turkish baths, massage and reducing salons. Persons engaged in the business of operating Turkish baths, reducing salons or in the business of massaging are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. “Turkish baths” shall mean any type of facility wherein the individual is warmed by steam or dry heat. “Reducing salons” shall mean any type of establishment which offers facilities or a program of activities for the purpose of weight reduction. “Massaging” shall include the kneading, rubbing or manipulating of the body to condition the body, but not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts. Persons engaged in the business of operating health studios which, as a part of their operation, offer any or all of the services of Turkish baths, massages or reducing facilities or programs shall be subject to tax upon the gross receipts from the above-named service.

701—26.48(422) Vulcanizing, recapping or retreading. Prior to May 18, 1984, persons engaged in the business of recapping or retreading tires for any vehicle or vulcanizing any type of product for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For the purposes of this rule, vulcanizing shall mean the act or process of treating crude rubbers, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity. On and after May 18, 1984, the sale of vulcanizing, recapping or retreading is treated as a sale of tangible personal property. See rule 701—16.51(422,423) for the effects of this change and for certain changes in the treatment of vulcanizing, recapping or retreading for the period beginning January 1, 1979, and ending May 17, 1984.

701—26.49 Rescinded, effective 3/18/87.

701—26.50(422) Weighing. Persons engaged in the business of weighing any item of tangible personal property are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.51(422) Welding. Persons engaged in the business of welding materials whether for the purpose of mending existing articles, adding to them or creating new articles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.52(422) Well drilling. Persons engaged in the business of well drilling who perform repair services are rendering a service, the gross receipts from which are subject to tax. Services within the ambit of subrule 26.2(1) are not subject to tax.

701—26.53(422) Wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables. Persons engaged in the business of wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. If the person “wraps, packs or packages” merchandise as a service incidental to the sale of such merchandise and does not charge for the service, no sales or use tax, in addition to that paid on the purchase price of the merchandise, need be collected or remitted. However, if a separate charge be made for “wrapping, packing or packaging,” the gross receipts therefrom are subject to tax.

701—26.54(422) Wrecking service. Persons engaged in the business of wrecking, tearing down, defacing or demolishing tangible personal or real property or any parts thereof are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.55(422) Wrecker and towing. Persons engaged in the business of towing any vehicle by means of pushing, pulling, carrying or freeing any vehicle from mud, snow or any other impediment, including hoisting incidental thereto, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The gross receipts from service charges made when any person travels to any place to lift, extricate or tow any vehicle or to salvage any vehicle are subject to tax. Towing does not include transporting operable vehicles from one location to another where no operative aspect of such vehicle is integral to such transporting. The exemption for transportation services shall not apply.

26.55(1) “*Vehicle*” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. “*Vehicle*” does not include:

- a. Any device moved by human power.
- b. Any device used exclusively upon stationary rails or tracks.
- c. Any steering axle, dolly, or other integral part of another vehicle, except an auxiliary axle as defined in 26.55(2) which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.
- d. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.

26.55(2) “*Auxiliary axle*” means a transferable axle with pneumatic tires utilized to convert any single axle to a tandem axle, or to convert any semitrailer to a full trailer with four or more wheels and which may be registered as if a vehicle.

This rule is intended to implement Iowa Code sections 422.43 and 423.1(7).

701—26.56(422) Cable and pay television. On and after July 1, 1990, persons engaged in the business of distributing the signals of one or more television broadcasting stations, or other television programming to subscribers, and using any transmission path, including a cable, for these signals are rendering the service of “pay television,” the gross receipts of which are subject to tax. Thus, the gross receipts from a service broadcasting signals from a satellite directly to a customer’s “satellite dish” or other receiving antenna would be taxable. Also taxable as the gross receipts from a “pay television service” would be the rental of any device used for decoding scrambled signals received from a communications satellite.

On and after July 1, 1985, and prior to July 1, 1990, the service of “cable television” only, rather than “pay television” was subject to tax. Thus, only if television programming was transmitted to subscribers by means of a cable during this five-year period were the gross receipts of that service subject to tax. A cable television service would include any facility using fiber optics as a transmission path for its distribution of signals to its customers. Prior to July 1, 1990, the gross receipts of a company broadcasting signals from a satellite directly to a customer’s “satellite dish” or other receiving antenna would not be subject to tax as the service of “cable television”; however, such a system could be a taxable “communication service.” See rule 701—18.20(422). The gross receipts from the installation of cable television service, separately itemized and billed, are not subject to tax.

The following television services are taxable, in any event, on and after July 1, 1990. These services are also taxable on and after July 1, 1985, if transmitted to viewers by way of a cable: the gross receipts from payments to view single events, as well as subscription payments are subject to tax. Also subject to tax are the gross receipts from any television service serving fewer than 50 subscribers or serving only customers in one or more multiple unit dwellings under common ownership, control, or management. Any person distributing signals to television screens in auditoriums or other buildings which show boxing matches and other events for viewing by a paying audience is in the business of providing a television service. Gross receipts from providing these signals to exhibitors of boxing matches or other events are subject to tax.

See 701—subrule 18.5(3) and rule 701—18.39(422,423) for a description of the special circumstance regarding taxation and nontaxation of municipally owned pay television service.

See rule 701—18.43(422,423) for an exemption applicable to cable television only for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.57(422) Camera repair. The gross receipts from repair of any still photograph, motion picture, video, or television camera are subject to tax. Included within the term “camera repair” is the repair of any camera part which may be detached from the camera body but which can be used only with a camera and would ordinarily be considered a part of the camera. Nonexclusive examples of such accessories are: detachable lenses, flash units and motor drives.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.58(422) Campgrounds. On and after July 1, 1985, the gross receipts from “campgrounds” are subject to tax. A “campground” is any location at which sites are provided for persons to place their own temporary shelter, such as a tent, travel trailer or motor home. Excluded from this characterization of “campground” is any hunting, fishing or other type of camp at which accommodations are provided in cabins or other permanent structures. The gross receipts from the operation of these camps were taxable prior to July 1, 1985, and remain taxable after that date. See rule 701—18.40(422,423). The gross receipts from the use of a site at a campground are subject to tax even if rented by the same person for a period of more than 31 consecutive days.

Included within the meaning of “gross receipts” from the services of a campground are any mandatory or optional charges imposed on persons using a site on the campground. These include, but are not limited to, campground entry fees, electric, water and sewer fees, fees for the use of swimming pools or showers, and fees for the privilege of keeping extra persons or extra vehicles at the campsite. The gross receipts from the use of any state park as a campground are subject to tax. The gross receipts from the use of any county or municipal park as a campground are exempt from tax.

Excluded from this characterization of the gross receipts from a campground are any charges to persons who are not residing on a site at the campground and who are, therefore, not camping there. Charges to such persons for the use of picnic areas, swimming pools, hiking trails or hayrides are not the gross receipts from a campground, but are the gross receipts from “commercial recreation” which are subject to tax and were subject to tax prior to July 1, 1985. See rule 26.24(422). Fees charged which allow entry for a vehicle to any state, county or municipal park (commonly called “park user fees”) shall not be subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 423.43(11).

701—26.59(422) Gun repair. On and after July 1, 1985, the gross receipts from “gun repair” are subject to tax. The term “gun repair” means the repair of any pistol, revolver or other hand gun, as well as the repair of any shoulder or hip-fired gun such as a rifle or shotgun. See *State v. Christ*, 177 N.W. 54 (Iowa 1920).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.60(422) Janitorial and building maintenance or cleaning. On and after July 1, 1985, gross receipts from janitorial services and building maintenance and cleaning are subject to tax. “Janitorial services” means the type of cleaning services performed by a janitor in the regular course of duty, whether such services are performed individually, under separate contract, or are included within a general contract to perform a combination of such services. The term includes, but is not limited to, contracts to perform interior window washing, floor cleaning, vacuuming and waxing, the cleaning of interior walls and woodwork, and cleaning of restrooms and furnaces. Also included within the meaning of the term is the movement of furniture and other items of personal property within a building. Persons performing either one or a number of janitorial services are engaged in a business, the gross receipts of which are subject to tax. Therefore, for example, a person engaged only in cleaning the interior windows of a building is engaged in taxable janitorial services.

The gross receipts from services which would otherwise be considered “janitorial” services are not subject to tax if those services are performed in a private residence, including an apartment or multiple housing unit, and the person paying for the services is an occupant of the residence. Such services are more in the nature of “housekeeping” than “janitorial” services and are not taxable.

Cleaning of the exterior walls or windows of any building or any other act performed upon the exterior of a building with the intent to keep the building in good upkeep or condition, other than a repair, is the service of “building maintenance.” Its gross receipts are subject to tax. Excluded from “building maintenance” is any service performed upon the exterior of a building which is a private residence and which is paid for by an occupant of the building.

Janitorial services or building maintenance performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of structure is exempt from tax. See rule 701—19.13(422,423).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.61(422) Lawn care. On or after July 1, 1985, persons engaged in the business of “lawn care” are performing a service, the gross receipts of which are subject to tax. “Lawn care” includes but is not limited to the following services: mowing, trimming, watering, fertilizing, reseeding, resodding and killing of insects, moles, other vermin, weeds, or fungi which may be threatening a lawn. Persons who mow lawns are providing a taxable service regardless of their ages.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.62(422) Landscaping. On or after July 1, 1985, the gross receipts from the service of “landscaping” are subject to tax. The services performed by one who arranges and modifies the natural condition of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment is engaged in the business of “landscaping.” Any services for which registration is required as a “landscape architect” under Iowa Code section 118A.2 are not subject to tax on the service of “landscaping” if performed by a registered landscape architect and separately stated and separately billed on a charge for landscape architecture. The gross receipts from landscaping performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure shall not be subject to tax. See rule 701—19.13(422,423).

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.63(422) Pet grooming. On or after July 1, 1985, persons engaged in the business of pet grooming are rendering a service, the gross receipts of which are subject to tax. A “pet” is any animal which has been tamed or gentled and which is kept by its owner for pleasure or affection rather than for utility or profit. “Grooming” consists of any act performed to maintain or improve the appearance of a pet and includes, but is not limited to, washing, combing, currying, hair cutting and nail clipping. Livestock are not pets, and the gross receipts from the grooming of livestock (e.g., to prepare those livestock for exhibition at fairs or shows) are nontaxable gross receipts. The gross receipts paid to any person who is not a veterinarian for the grooming of any dog (other than a Seeing Eye dog) or cat will be presumed to be the gross receipts from “pet grooming” and subject to tax.

If pet grooming is done for veterinary purposes, the sales tax does not apply since the grooming is an integral part of the nontaxable service of veterinary care. If pet grooming is done for both veterinary and cosmetic reasons, the primary purpose for the treatment will determine if sales tax should be collected. In situations where the charge for the cosmetic treatment and the veterinary-related treatment can be invoiced separately, sales tax should be collected only on the cosmetic portion of the billing. It will be presumed that pet grooming activities such as washing, trimming, and cutting are for cosmetic purposes unless it can be shown that the treatment was primarily done for veterinary purposes.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.64(422) Reflexology. On and after July 1, 1985, persons engaged in the business of reflexology are rendering a service, the gross receipts of which are subject to tax. “Reflexology” is a system for the treatment of illness which assumes that certain “reflex points” exist in the feet or hands and that each of these reflex points is related to the health of one organ or portion of the body. By massaging these reflex points, a “reflexologist” seeks to alleviate nervous tension, and by this alleviation to relieve arthritis, headaches, backaches, stiff necks and other ailments.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.65(422) Tanning beds and tanning salons. On or after July 1, 1985, persons engaged in the business of providing tanning beds and tanning salons are performing a service, the gross receipts of which are subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.66(422) Tree trimming and removal. On or after July 1, 1985, persons engaged in the business of tree trimming and removal are performing a service, the gross receipts of which are subject to tax. Persons engaged in “stump removal” are engaged in a taxable service, as are persons engaged in the removal of any other portion of a tree, such as the branches or trunk. The trimming or removal of any shrub which has a woody main stem or trunk with branches shall constitute tree trimming or removal and the gross receipts from the trimming or removal of such a shrub shall be subject to tax. Persons engaged in the business of tree trimming and removal who cut the wood from the trees which they trim or remove into sizes suitable for sale as firewood and who sell this wood for firewood are engaged in the sale of tangible personal property, and the gross receipts from the sale of this wood are subject to tax. The services of persons who trim or remove trees and sell the wood which they have cut are not services sold for resale and are subject to tax.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.67(422) Water conditioning and softening. On and after July 1, 1985, persons engaged in the business of water conditioning and softening are performing a service, the gross receipts of which are subject to tax. “Water softening” means the removal of minerals from water to render it more suitable for drinking and washing. “Water conditioning” means any action other than water softening taken with respect to water which renders the water fit for its intended use or more healthful or enjoyable for human consumption. The phrase “water conditioning” includes but is not limited to water filtration, water purification, deionization and reverse osmosis. The service of water purification is taxable whether performed for residential, commercial, industrial, or agricultural users.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.68(422) Motor vehicle, recreational vehicle and recreational boat rental. On and after July 1, 1985, the gross receipts from the rental of certain motor vehicles subject to registration, which are registered for a gross weight of 13 tons or less, recreational vehicles and recreational boats are subject to tax.

26.68(1) Use of vehicles and boats with drivers or operators. For the purposes of this rule, if the services of a driver or operator are provided as part of the fee for the use of any vehicle or boat, no rental of the vehicle or boat has occurred. Even though the person using the vehicle or boat has the right to control the driver’s or operator’s movements, the gross receipts from use of the vehicle are not subject to tax as vehicle or boat rental. If the vehicle or boat is rented from one person and the services of the driver or operator rented from another, tax will apply.

26.68(2) Rental of vehicles subject to registration.

a. “*Certain long-term*” leases not subject to tax. The gross receipts from the leasing of any vehicle subject to registration for a gross weight of 13 tons or less are not subject to tax if the lease is a written agreement providing for the lease of the vehicle for more than 60 days and if the lessor, at the time of the signing of the lease, is licensed under Iowa Code chapter 321F. On or after January 1, 1997, a use tax shall be imposed on the lease price of certain motor vehicles leased for a period of 12 months or more. See rule 701—31.5(423).

b. Transactions subject to Iowa sales tax. A “rental” of tangible personal property, such as a vehicle subject to registration, occurs when one person transfers possession of tangible personal property to another person for temporary possession and use, pursuant to contract, *A.C. Nelsen Auto Sales v. Turner*, 44 N.W.2d 36 (Iowa 1950) and *Ballstadt v. Iowa Department of Revenue*, 368 N.W.2d 147 (Iowa 1985). Therefore, a “rental” of a vehicle has occurred in Iowa when, pursuant to a rental contract, possession of a vehicle is transferred to a customer in this state unless paragraph “a” of this sub-rule is applicable. The tax is collectible when any lump-sum or periodic payment is due under the rental agreement and paid in Iowa. Transfer of possession of the vehicle must have occurred in Iowa; the contract for rental of the vehicle need not have been executed here. Sales tax is payable on transfer to a customer upon possession of a rented vehicle in Iowa regardless of whether the vehicle is subsequently used exclusively in interstate commerce or not if payment by the customer is made in Iowa.

EXAMPLE 1. Customer A signs a rental contract with and takes possession of a rental car from an office of a rental agency located in Des Moines. Thereafter, A drives the car from Des Moines to Dubuque, Iowa, and back. In Des Moines, the rental agency collects gross receipts from the rental of \$100. Such gross receipts would be subject to tax. If the customer had driven the rental car from Des Moines to Madison, Wisconsin, and back to Des Moines, the gross receipts would also be subject to tax.

EXAMPLE 2. Customer B enters into a contract to rent an automobile with a rental agency’s office located in Omaha, Nebraska. B takes possession of the car rented under the contract at the rental agency’s office in Council Bluffs, Iowa. B then drives the car from Council Bluffs to Dubuque and back. All gross receipts from the rental are subject to Iowa sales tax since delivery and payment occurred in Iowa.

EXAMPLE 3. Customer C enters into a contract to rent and takes possession of a rented automobile in Des Moines. Thereafter, C drives the vehicle to California and returns the vehicle to the rental agency’s office in Los Angeles, and there pays a total charge for the rental of \$300. No Iowa sales tax is due. Transfer of possession occurred here, but payment under the lease did not.

EXAMPLE 4. Customer D rents and takes possession of a truck in Des Moines. Before taking possession, D pays the rental agency a \$500 deposit. Rental of the truck is on a mileage and per-day basis. Customer D drives the truck to Phoenix, Arizona. There it is discovered that the mileage and per-day charges add up to \$600. Customer D pays the rental agency an additional \$100 in Phoenix. Iowa sales tax is due upon the \$500 deposit paid in Des Moines but not on the \$100 paid in Phoenix. Only the payment made under the lease in Iowa is subject to tax.

EXAMPLE 5. Customer E rents a car in Chicago, Illinois, and drives it to Des Moines. In Des Moines E pays \$200 for the use of the car. Although payment under the lease occurred in Iowa, transfer of possession of the vehicle did not take place here. This transaction is not subject to sales tax but may be subject to use tax; see rule 701—33.8(423).

26.68(3) Tax collected from customer. The person renting any vehicle subject to registration must collect from the customer and remit to the state of Iowa sales tax on each and every rental payment made in Iowa, no matter how calculated. Tax must be remitted for the period in which each rental payment is due and owing. Rental payments whether calculated in one lump sum, or on a mileage basis, or periodically are subject to tax. Also subject to tax are any charges, such as those for compulsory insurance, which are characterized as something other than rent payments but which are required to be paid as a condition of the rental. Specifically, but not exclusively excluded from the meaning of gross receipts from rental of a vehicle subject to registration are items such as optional collision damage waiver fees, optional personal accident insurance fees, and fuel. If these charges are not to be included as part of rentals, a charge must be separately stated, separately itemized, and the charge cannot be required as a condition of the rental.

26.68(4) *Recreational boats.* The term “recreational boats” includes, but is not limited to, sailboats, rowboats, motorboats, paddleboats, and canoes. The gross receipts from the sale of tickets on river steamboats carrying passengers for pleasure rides are not taxable as the gross receipts of “recreational boat” rental but are taxable as the gross receipts from an “amusement enterprise.” See rule 701—16.32(422).

26.68(5) *Recreational vehicles.* The term “recreational vehicles” includes, but is not limited to, bicycles, go-carts, golf carts and horse-drawn wagons or carriages, if rented without a driver. Rental of a recreational vehicle that is a vehicle subject to registration is also subject to tax.

This rule is intended to implement Iowa Code section 422.45 and Iowa Code section 423.7A as amended by 1996 Iowa Acts, chapter 1125.

701—26.69(422) *Security and detective services.* On or after July 1, 1985, persons engaged in the business of providing security or detective services are performing services, the gross receipts of which are subject to tax.

26.69(1) *Security service characterized.* Any person who provides a service, the purpose of which is to protect property from theft, vandalism or destruction or individuals from physical attack or harassment is providing a “security service.” Persons engaged in the following services are providing a taxable security service. The list is not exclusive: rental of guard dogs, burglar and fire alarm systems; providing security guards, bodyguards and mobile patrols; and protection of computer systems against unauthorized penetration.

26.69(2) *Detective services characterized.* Persons engaged, for a consideration, in the service of investigation for the purpose of obtaining information regarding any one or more of the following matters are engaged in the business of providing a “detective service,” and their gross receipts shall be subject to tax. Investigation of crimes or wrongs done or threatened; the habits, conduct, movements, whereabouts, associations, transactions, or reputation or character of any person; the credibility of witnesses or other persons; the investigation or recovery of lost or stolen property or the cause, origin, or responsibility for fires, accidents, or injuries to property; the investigation of the truth or falsity of any statement or representation; the detection of deception; or the business of securing evidence to be used before authorized investigating committees, boards of award or arbitration, or in the trial of civil or criminal cases. The services of a peace officer engaged privately in security or detection work are also subject to tax.

26.69(3) *Gross receipts not subject to tax.* Gross receipts from the following activities are not subject to tax as the gross receipts from security or detective services.

- a. The services of a person employed full- or part-time by an employer in connection with the affairs of the employer.
- b. The services of an attorney licensed to practice in Iowa, while performing duties as an attorney.
- c. The services of a person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of any person.
- d. The services of a person exclusively engaged, either as an employee or an independent contractor, in making investigations and adjustments for insurance companies.
- e. The service of notice, or any other document, to a party, witness or any other person in connection with any criminal, civil or administrative litigation.
- f. The service of soliciting any debtor to pay or collecting payment for any debt.

g. The service of securing information regarding the fitness or unfitness of any individual for prospective employment, if such information is secured by written or electronic communication only, e.g., checking of résumés.

h. Services as a consultant, who is rendering advice or providing training with regard to security and detection matters.

26.69(4) Charges excluded from gross receipts. Mileage and other travel expenses, lodging and meal expenses, fees paid for records, and amounts paid for information do not constitute a portion of the gross receipts from security or detective services if separately identified, separately billed and reasonable in amount.

See rule 701—18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.70(422,423) Lobbying. From July 1, 1985, to June 30, 1987, the gross receipts from any “lobbying” service are subject to tax. As of July 1, 1987, the tax is repealed. For purposes of this rule “lobbying” means rendering, furnishing, or performing, for compensation, activities which are intended or used for the purpose of encouraging the passage, defeat, or modification of legislation or for influencing the decision of the members of a legislative committee or subcommittee; or the representing, for compensation, on a regular basis of an organization which has as one of its purposes the encouragement of the passage, defeat, or modification of legislation or the influencing of the decision of the members of a legislative committee or subcommittee. Excluded from the definition of “lobbying” are the activities of any federal, state, or local government official or employee acting within the course of that official’s or employee’s duties or the activities of a representative of the news media engaged only in the reporting and dissemination of news and editorials. The gross receipts from any lobbying service for an “employer” as defined in Iowa Code subsection 422.42(13) are exempt from tax. See *Minneapolis Star and Tribune Company v. Minnesota Commissioner of Revenue*, 460 U.S. 575, 75 L.Ed.2d 295, 103 S.Ct. 1365 (1983), 1986 O.A.G., 86-3-3 and 1983 O.A.G., 83-7-1.

This rule is intended to implement 1987 Iowa Acts, chapter 214.

701—26.71(422,423) Solid waste collection and disposal services.

26.71(1) Definitions.

a. “Solid waste” is garbage, refuse, or sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954. On or after July 1, 1994, the term also excludes auto hulks, street sweepings, ash, construction debris, mining waste, trees, tires, lead acid batteries and used oil.

b. Rescinded IAB 10/12/94, effective 11/16/94.

c. *“Agricultural operations.”* An agricultural operation is any enterprise engaged in the raising of crops or livestock for market on an acreage. Included within the meaning of the term are feed lots; operations growing and raising hybrid seed corn or other seed for sale to farmers; nurseries; ranches; orchards and dairies. Excluded from the meaning of the term are commercial greenhouses; logging; beekeeping; catfish raising operations; those engaged in the production of Christmas trees; and those raising nondomesticated animals, such as mink, or nondomesticated fowl. The above list of inclusions and exclusions from the term “agricultural operation” is not exhaustive.

d. *“Industrial operation.”* A business is an “industrial operation” if its purchases or rentals of machinery or equipment are eligible for the Iowa sales and use tax exemption for industrial machinery and equipment. See Iowa Code subsection 422.45(27).

e. *“Mining operation.”* A mining operation is one engaged in either underground mining, strip mining, or quarrying.

f. *“Nonresidential commercial operation.”* Any operation which is an industrial, commercial, agricultural, or mining operation whether for profit or not. Included within the meaning of the term “nonresidential commercial operation” are hotels and motels. Excluded from the meaning of the term are apartment complexes, mobile home parks, or a single or multifamily dwelling. The word “commercial” is not to be understood in a narrow sense as referring only to a “for profit” operation, but in the broader sense of that word to refer to all organizations (for instance churches, charities, and fraternal organizations) that are involved in the buying and selling of goods and services in the marketplace generally.

Examples of “nonresidential commercial operations” include the following: professional firms (doctors, lawyers, accountants, or dentists); restaurants; repair persons; persons selling and renting all sorts of tangible personal property; persons selling insurance of all kinds; appraisers; the skilled trades (e.g., plumbers, carpenters, and electricians); construction contractors; banks and savings and loans; barbers and beauticians; day care centers; counseling services; employment agencies; janitorial services; landscapers; painters; pest control; photography; printing; realtors; storage services; not-for-profit hospitals; the United Way; the American Cancer Society; the Elks and Masons; and churches, synagogues, and mosques. These examples are not exclusive.

26.71(2) *Tax imposed.* On and after April 1, 1992, gross receipts from the sale, furnishing, or service of solid waste collection and disposal are taxable.

Date of billing controls imposition of tax. Gross receipts from the sale, furnishing, or service of solid waste collection and disposal are subject to the Iowa sales tax if the date for the retailer’s billing of a customer falls on or after April 1, 1992. If a bill itself contains no billing date, the date of billing is the billing date set out in the retailer’s books and records. If a retailer’s books and records contain no billing date and the bill is sent by mail, the date of the bill is the postmark on the letter containing it.

26.71(3) *Retailers obligated to collect the tax.* Counties and municipalities which provide the service of solid waste collection and disposal to nonresidential commercial operations are obligated to collect Iowa sales tax upon the gross receipts from the provision of those services. A city or county providing the service of solid waste disposal is a “retailer” obligated to collect tax from these operations.

Any person who has contracted to provide solid waste collection and disposal service to a city or municipality is obligated to collect tax upon the gross receipts from that service performed for the city or county on behalf of nonresident commercial operations located within the city or county.

EXAMPLE: City D contracts with ABC Disposal Service for ABC to provide solid waste removal to persons within the boundaries of City D. In return for this service, City D pays ABC Disposal Service \$2 million per year. Some of the persons for whom ABC collects and disposes of solid waste are retail sales businesses, another is a manufacturing plant, another an apartment building, others are a quarry and turkey raising operation located within the city limits; finally, a number of persons whose garbage is collected by ABC are residents who own or rent their homes. ABC must collect tax from City D upon that portion of its business which is attributable to the service of solid waste collection and disposal which ABC provides to the city on behalf of the nonresident commercial operations located within City D. See subrule 26.71(4) for suggestions concerning formulas which ABC might use to compute the amount of tax which it is obligated to collect from City D.

26.71(4) *Retailers who provide both taxable and nontaxable solid waste collection and disposal service.* A retailer who is paid in one lump sum by a customer for providing both taxable and nontaxable solid waste collection and disposal service may, depending upon circumstances, collect tax upon all, none, or some of the proceeds collected from the customer. A retailer must collect tax upon all proceeds from a customer if nontaxable services rendered are only incidental to the retailer's taxable services. If taxable services rendered are incidental to nontaxable services rendered, then a retailer need not collect tax upon any of its receipts from a customer. If a substantial portion of the service which a retailer performs is taxable and a substantial portion of the service which it performs is nontaxable, then the retailer must collect tax upon that portion of its proceeds which reflects its taxable service and exclude from tax that portion of its proceeds derived from its nontaxable service.

A retailer may, after filing a petition with and securing the approval of the department, use a formula to determine the amount of taxable and nontaxable services which it performs for any one customer. This formula can then be utilized to calculate the retailer's taxable gross receipts.

EXAMPLE: ABC Disposal Service is providing solid waste disposal service to Company D. Company D owns 100 residential apartment units and a building containing 20 office suites. Under the contract between ABC and Company D, in return for collecting Company D's garbage, ABC bills Company D \$750 per month. Part of this billing is, of course, for the nontaxable service of garbage collection from the residential apartment units and part for the taxable service of collecting garbage from the office building. In this instance, the ideal method of separating taxable gross receipts from nontaxable proceeds would be by a formula. A possible formula would be by weight. Assume that 1000 pounds of garbage per month is collected from the apartment building and 500 pounds from the office building. In this case, taxable gross receipts would be computed as follows:

$$\frac{500}{1000 + 500} = 1/3 = \text{Percentage of garbage collected from the taxable office building.}$$

$$750 \times 1/3 = 250 = \text{Taxable gross receipts from the \$750 proceeds.}$$

Other possible bases for a formula include number of units of taxable and exempt operations or number of square feet of taxable and exempt operations if these reasonably reflect the amount of taxable and exempt service performed for any one customer. The department will approve any formula which realistically reflects the amount of taxable and nontaxable work performed for a single customer and paid in one lump sum. Any petition for use of a formula must contain an adequate description of the petitioner's operation, the formula which will be applied to it and why this formula accurately reflects the taxable and nontaxable work performed by the petitioner.

26.71(5) *Tax imposed upon disposal charges or tipping fees.* Persons who transport solid waste generated by the transporter or who transport, without compensation, solid waste generated by another person shall pay the tax set out in this rule at the collection or disposal facility to which the waste is transported. The gross receipts shall be based upon the disposal charge or tipping fee imposed by the facility. Also, the amount of any disposal charge or tipping fee imposed as a part of the service of collecting and managing recyclable materials separated from solid waste by the waste generator is excluded from the gross receipts of the tax set out in this subrule.

EXAMPLE: John's Quick Lube hauls its own solid waste to the local landfill. There, once a week, John's Quick Lube pays \$50 to dump all the solid waste which it generates into the landfill, except for the used motor oil which it collects from its customers. John's Quick Lube pays the landfill operator another \$50 per week to collect this used oil and send it on to a different location for recycling into new products. In this case, John's Quick Lube is obligated to pay sales tax upon the \$50 disposal fee charged for the solid waste which enters the landfill. However, exempted from tax is the \$50 paid to the landfill operator to store and pass on the used motor oil. In addition to used motor oil, "recyclable materials" means materials such as paper, glass, metals (e.g., copper, aluminum and iron), and batteries, so long as these materials are separated from other solid waste for the purpose of recycling.

26.71(6) *Exemption for a "recycling facility."* The gross receipts from the service of solid waste collection and disposal provided to a recycling facility which separates or processes recyclable materials and, as a result of that separation or processing, reduces the volume of the waste collected by at least 85 percent are exempt from tax if the waste is collected and disposed of separately from other solid waste. "Recycling facilities" are those facilities where recyclable materials are separated or processed for the purpose of reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of the recyclable materials in a manner that precludes further use. Because of this, facilities that separate or process recyclable materials for use as fuel are not eligible for this exemption. An example of a qualifying recycling facility is a facility which produces insulation from used glass.

This rule is intended to implement Iowa Code section 422.43.

701—26.72(422,423) Sewage services.

26.72(1) *Definitions.*

- a. "*Sewage service*" is the service of collecting rainwater and other liquid and solid refuse or excreta for drainage or purification by means of pipes, channels, or conduits usually placed underground.
- b. "*Agricultural operations.*" This phrase has the meaning ascribed to it in 26.71(1) "c."
- c. "*Industrial operations*" has the meaning ascribed to it in 26.71(1) "d."
- d. "*Mining operation.*" This term has the meaning ascribed to it in 26.71(1) "e."
- e. "*Nonresidential commercial operation.*" This phrase has the meaning ascribed to it in 26.71(1) "f."

26.72(2) *Tax imposed.* On and after April 1, 1992, gross receipts from the sale, furnishing, or service of sewage service provided to nonresidential commercial operations are taxable.

The date of billing controls the imposition of the tax. Gross receipts from sewage service are subject to Iowa sales tax if the date for the service provider's billing of a customer falls on or after April 1, 1992. If a bill itself has no billing date, the date of billing is the date set out in the provider's books and records. If a provider's books and records contain no billing date and the bill is sent by mail, the date of the bill is the postmark on the letter containing the bill.

26.72(3) *Retailers obligated to collect the tax.* Counties, municipalities, sanitary districts, or any other persons which provide sewage service to nonresidential commercial operations are obligated to collect Iowa sales tax upon the gross receipts from the rendering, furnishing, or performing of sewage services to those operations.

Any person who has contracted to provide sewage services to a county or municipality is obligated to collect tax upon the gross receipts from those services performed for the city or county on behalf of nonresident commercial operations located within the city or county.

See subrule 26.71(4) for an explanation of how a retailer who is providing taxable and nontaxable service to the same customer for one lump sum ought to treat the proceeds of such a transaction.

This rule is intended to implement Iowa Code section 422.43.

701—26.73(422,423) *Consultant services.* Rescinded IAB 6/24/92.

701—26.74(422,423) *Aircraft rental.* On or after April 1, 1992, the total gross receipts for rental of aircraft are subject to sales and use tax if the rental is for a period of 60 days or less. For purposes of this rule, "aircraft" means the same as the definition in Iowa Code section 328.1, subsection 4, a drone aircraft or aircraft transporting only the pilot.

This rule is intended to implement Iowa Code subsection 422.45(5).

701—26.75(422,423) *Sign construction and installation.* On or after April 1, 1992, the total gross receipts for the construction and installation of signs are subject to sales and use tax. For purposes of this rule, "sign" means notices erected and maintained for the purpose of providing information, notices, markers, advertising of products or services. A sign includes, but is not limited to, billboards, indoor or outdoor sign devices, and any structure erected and maintained for the purpose of conveying information.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.76(422,423) *Swimming pool cleaning and maintenance.* On or after April 1, 1992, the total gross receipts for the cleaning and maintenance of a swimming pool are subject to sales and use tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.77(422,423) *Taxidermy.* On or after April 1, 1992, the total gross receipts for the service of taxidermy are subject to sales and use tax. For purposes of this rule, "taxidermy" means the art or operation of preparing, stuffing, or mounting the skin, head, carcass, or part of a carcass of a dead animal.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.78(422,423) Mini-storage. On or after April 1, 1992, the total gross receipts from mini-storage are subject to sales and use tax. For purposes of this rule, “mini-storage” means a commercial operation that provides individual storage units of various sizes to persons for the purpose of storing tangible personal property. In some instances mini-storage facilities are fenced and the individual units have an alarm system. Persons leasing individual units generally provide their own security lock and they have sole access to the unit. Mini-storage also includes a secured area in which vehicles, boats, recreational vehicles, and camping trailers and other types of tangible personal property are stored. Mini-storage does not include storage lockers or storage units at apartment complexes for the primary convenience of the tenant. Mini-storage space is not a warehouse. See 26.42(1) “b” for provisions on storage of raw agricultural products and household goods.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.79(422,423) Dating services. On and after April 1, 1992, the gross receipts from the service of providing an opportunity for two individuals to meet and interact socially with the possibility of forming a relationship are subject to tax. By way of nonexclusive example: “Dating services” include the services of those who provide an opportunity for individuals to describe themselves to and meet potential partners through videotapes and 900 numbers. Also included within the meaning of the term are escort services. Excluded from the definition of “dating services” are the services of marriage matchmakers, telephone 900 numbers which provide an opportunity only for conversation as opposed to face-to-face meetings, or newspaper and magazine advertisement soliciting for companionship.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—26.80(422,423) Limousine service. On and after April 1, 1992, the gross receipts from the rendering, furnishing, or performing of a limousine service are subject to Iowa sales tax. A limousine service is one which provides a large or luxurious automobile with a driver by prearrangement. A limousine driver does not cruise the streets soliciting or accepting business, so a taxi service is not a limousine service. Charges for a limousine driver, whether billed as a part of or separate from the charges for a limousine, are taxable.

This rule is intended to implement Iowa Code subsection 422.43(11).

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